IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION No. 28708 of 1997

Between:

A. Sivalingam Goud, S/o Malla Goud ..... PETITIONER

AND

1 The District Collector (Proh. & Excise)
Sangareddy, Medak District.
2 The Asst. Commissioner of Proh. & Excise/ Excise Superintendent,
Sangareddy, Medak District.
3 The Proh. & Excise Sub-Divisional, Excise Officer/ Asst. Excise Superintendent, Medak Sub-Division, Medak District.
4 The Inspector of Proh. & Excise (SHO),
Medak Medak District.
5 The Manager, Dist. Medak Coop. Central Bank,
Medak Branch Medak District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an Order or Direction more particularly one in the nature of Writ of Mandamus directing the respondents not to insist the personal assets of the petitioner which is deposited in the 5th respondents bank, consequently declare the Distraint Order passed by the 3rd and 4th respondents dt: 15-10-97 as illegal and pass such other order/s which are necessary in the interest of justice.

Counsel for the Petitioner : Mr.B.SAI RAM GOUD

Counsel for Respondents 1 to 4 : GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for respondents 1 to 4.

Questioning the distraint order dated 15.10.1997, passed by the third respondent, requesting the fifth respondent not to release the amounts deposited by the petitioner, without knowledge of the third respondent, the present writ petition is filed.

The learned counsel for petitioner submits that before issuing the distraint order, no notice or enquiry was either issued or conducted by the third respondent, and therefore, the same is liable to be set aside for it violated the principles of natural justice, and in support of this contention, he placed reliance on a judgment of this Court in **K.Shiva Goud and others v. Government of Andhra Pradesh and others.**

Even though the writ petition is of the year 1997, no counter affidavit is filed by the respondents. While admitting the writ petition, this Court by order dated 5.11.1997 directed the respondents not to take coercive steps in pursuance of the impugned order.

In the absence of any counter filed by the respondents rebutting the averments made by the petitioner in the affidavit filed in support of the writ petition, this Court has no other alternative, except to presume that no notice or enquiry was either issued or conducted by the third respondent before passing the impugned distraint order, which is in sheer violation of the principles of natural justice.

Hence, the impugned distraint order cannot be sustained, and is hereby set aside. Accordingly, the writ petition is allowed.

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N.V.RAMANA, J

Date: 11.4.2005

DA/SVV

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki , The Acting Chief Justice on the Eleventh day of April, Two Thousand and Five.

REGISTRAR

To

1 The District Collector (Proh. & Excise)
Sangareddy, Medak District.
2 The Asst. Commissioner of Proh. & Excise/ Excise Superintendent,
Sangareddy, Medak District.
3 The Proh. & Excise Sub-Divisional, Excise Officer/ Asst. Excise Superintendent, Medak Sub-Division, Medak District.
4 The Inspector of Proh. & Excise (SHO),
Medak Medak District.
5 The Manager, Dist. Medak Coop. Central Bank,
Medak Branch Medak District.

6 Two CCs to the G.P. for Proh. & Excise, High Court Buildings, Hyderabad (OUT).

7 Two CD copies.